

REMARKS

The Office Action mailed August 6, 2009, has been received and reviewed. Claims 1-25 are currently pending in the application. Claim 23 was allowed. Claims 1-22, 24 and 25 stand rejected. Applicant has amended no claims and respectfully requests reconsideration of the application as presented herein. No new matter has been added.

35 U.S.C. § 103(a) Obviousness Rejections

Obviousness Rejection Based on NPL XP-001017264, EP 0658014 and U.S. Patent No. 6,112,101

Claims 1-4, 6-10, 12-16, 18-20, 24 and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over NPL XP-001017264 to Siwko ("Siwko") in view of European Patent Applicant No. EP 0658014 to Redden *et al.* ("Redden") and further in view of U.S. Patent No. 6,112,101 to Bhatia *et al.* ("Bhatia").

To establish a *prima facie* case of obviousness ***the prior art reference (or references when combined) must teach or suggest all the claim limitations.*** *In re Royka*, 490 F.2d 981, 985 (CCPA 1974); *see also* MPEP § 2143.03. Additionally, there must be "a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1742, 167 L.Ed.2d 705, 75 USLW 4289, 82 U.S.P.Q.2d 1385 (2007). Finally, to establish a *prima facie* case of obviousness there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Furthermore, the reason that would have prompted the combination and the reasonable expectation of success must be found in the prior art, common knowledge, or the nature of the problem itself, and not based on the Applicants' disclosure. *DyStar Textilfarben GmbH & Co. Deutschland KG v. C. H. Patrick Co.*, 464 F.3d 1356, 1367 (Fed. Cir. 2006); MPEP § 2144. Underlying the obvious determination is the fact that statutorily prohibited hindsight cannot be used. *KSR*, 127 S.Ct. at 1742; *DyStar*, 464 F.3d at 1367.

The 35 U.S.C. § 103(a) obviousness rejections of claims 1-4, 6-10, 12-16, 18-20, 24 and 25 are improper because the elements for a *prima facie* case of obviousness are not met. Specifically, the rejection fails to meet the criterion that the prior art reference must teach or

suggest all the claims limitations.

Regarding independent claim 1 and claims 2-4, 6 and 7 depending therefrom, independent claim 8 and claims 9, 10, 12 and 13 depending therefrom, independent claim 14 and claims 15, 16 and 18 depending therefrom, independent claim 19 and claim 20 depending therefrom and independent claims 24 and 25, Applicant's independent claims 1, 8, 14, 19, 24 and 25 include claim limitations not taught or suggested in the cited references.

Generally, Applicant's invention as presently claimed recites (1) "receiving" and "adjusting" "an initial call request block probability" at the "mobile station/apparatus" and (2) "blocking" as claimed by Applicant, wherein "the mobile station blocks a call request by foregoing origination of the call request." Specifically, Applicant's independent claims 1, 8, 14, 19, 24 and 25 each recite, *inter alia*, "receiving at a mobile station/an apparatus an initial call request block probability ...and adjusting at the mobile station/the apparatus said initial call request block probability based on said elapsed time, said adjusted call request block probability identifying when the mobile station blocks a call request by foregoing origination of the call request." In contrast, neither Siwko nor Redden nor Bhatia teach or suggest (1) giving adjustment control to a mobile station or (2) "blocking" as claimed by Applicant, wherein "the mobile station blocks a call request by foregoing origination of the call request."

Regarding Siwko. Siwko generally teaches of mobile stations freely generating unrestrained call requests and then the network access controller chooses which ones to admit or reject. Specifically, the Office Action states:

Siwko discloses that the receiving and adjusting occur at network element [note that *network element can be any element connected to the network, including the mobile device*] (Office Action, p. 4; emphasis added).

The Office Action improperly concludes that the "network", as taught by Siwko, is inclusive of the "mobile device." Siwko clearly teaches counter to this unsupported allegation. Applicant respects the Examiner's position but provides the following quotations from Siwko to support the position that (1) *Siwko does not teach* or suggest giving adjustment control to a mobile station and (2) *Siwko does not teach* call blocking as "the mobile station blocks a call request by foregoing origination of the call request" as claimed by Applicant.

Regarding support that Siwko teaches mobile stations as not being part of Siwko's

“network”, Siwko specifically discloses:

The *network resources* available to *serve* other, lower priority *users* will decrease
(Siwko, p. 351, right col., lines 6-7; emphasis added).

CAC policies protect a network from overloading *by determining whether incoming connection requests* should be accepted or rejected. (Siwko, p. 351, right col., lines 6-17; emphasis added).

Consider a multiple access *network whose communication resources are shared among* a multitude of *stations*. (Siwko, p. 352, left col., lines 26-27; emphasis added).

The network is connection oriented, so *stations desiring to use the network must* first *submit* a connection *request to the network* access controller. (Siwko, p. 352, left col., lines 27-30; emphasis added).

Clearly, Siwko’s teachings above *unquestionably* support a “network” apart from “users” and “stations” since the “users” and “stations” *receive access to* “network resources.” Furthermore, their “connection requests” for “desiring to use the network” *are “submit[ted]” to* the “network” which “determin[es] whether incoming connection requests should be accepted or rejected.” Additionally, since the “CAC policies protect a network ... by determining whether incoming connection requests should be accepted or rejected,” the CAC policy forms part of the network and not the “stations.” Accordingly, Siwko does not teach the stations are part of the “network”, neither does Siwko teach the CAC policies are part of the “stations.”

Regarding support that Siwko does not teach call blocking by foregoing origination of the call request, Siwko specifically discloses:

Connection requests arrive at the system according to a Poisson process with mean arrival rate λ . *A CAC policy decides whether a connection request is to be admitted or rejected. Connections whose requests are rejected by the CAC policy are said to be blocked* and are lost. A CAC policy must block a connection request if the connection’s admission would cause the allocated resources to exceed the capacity. (Siwko, p. 352, left col., line 53-right col., line 3; emphasis added).

Clearly, Siwko’s teachings above *unquestionably* teach call requests that are originated by a station *and are then “blocked” by the network by being “rejected” after being received* and subjected to the CAC policy. In contrast, Applicant’s independent claims 1, 8, 14, 19, 24 and 25 each recite, *inter alia*, “the mobile station *blocks a call request by foregoing origination of the call request*” which is clearly not taught in Siwko. Applicant’s claimed invention of “foregoing origination of the call request” prevents generation of unnecessary interference and consumption

of bandwidth while unnecessarily consuming power at the mobile station.

Therefore, according to Siwko, (1) all of the “receiving” and “adjusting” occur at the network and **not** at the “the mobile station/the apparatus” as claimed by Applicant, and (2) Siwko does not teach call blocking as “the mobile station blocks a call request by foregoing origination of the call request” as claimed by Applicant. Accordingly, the rejection is improper and must be withdrawn since the Office Action has improperly characterized the teachings of Siwko.

Regarding Redden, the Office Action states:

Redden discloses *receiving at a mobile station and an initial call request block probability* (Office Action, p. 4; emphasis added).

Furthermore, Redden teaches:

FIG. 9 illustrates procedure 300 *performed by* a communication node (for example, *satellite* 12 of FIG. 1) ..., the communication node [e.g., satellite] receives a parameter set from the communication system ... task 304 [performed in the satellite] modifies the parameter set ... [task 314 [satellite] broadcasts the parameter set on at least one of the broadcast channels (Redden, p. 14, lines 4-19; emphasis added).

According to Redden, all of the “receiving” happens at either the satellite or at the mobile stations **after** the modifications have occurred while **all** of the “adjusting” happens either in the “communication node (e.g., satellite)” or the “communication system”. Accordingly, Redden also *fails* to teach of any “*adjusting occurring in the “the mobile station/the apparatus”*” as claimed by Applicant.

Regarding Bhatia, the Office Action introduces Bhatia and states:

Bhatia discloses a mobile device that receives a broadcast message which identify when the mobile station blocks a call request by foregoing origination of the call request (see col. 2, lines 38-53; col. 4, lines 34-41). Therefore, it would have been *obvious* to one of the ordinary skills in the art at the time of the invention *to combine these teachings* to let the mobile station know when it is possible to transmit and make a call, without the need of the mobile station transmit when the wireless resources are not present, thereby efficiently managing the finite wireless resources. (Office Action, p. 4; emphasis added).

Applicant respectfully disagrees. Applicant respectfully points out that Bhatia teaches

that the mobile station *monitors a broadcast of a current priority* (i.e., an indicator identifying a subscription level) of a group of mobile stations being serviced by the network *and then* the mobile station *compares the broadcast current priority with a stored priority in the mobile station* to determine if the mobile station is permitted to access the network. (Bhatia, col. 4, lns. 34-41). However, Bhatia, like Siwko and Redden, fails to teach “receiving at a mobile station/an apparatus an initial call request block probability ...and adjusting at the mobile station/the apparatus said initial call request block probability based on said elapsed time, said adjusted call request block probability identifying when the mobile station blocks a call request by foregoing origination of the call request” as claimed by Applicant in independent claims 1, 8, 14, 19, 24 and 25.

Therefore, since Siwko, Redden and Bhatia, either individually or in any proper combination do not teach or suggest all of Applicant's claim elements, these references cannot render obvious, under 35 U.S.C. §103, Applicant's invention as presently claimed in Applicant's independent claims 1, 8, 14, 19, 24 and 25 which each recite, *inter alia*, “receiving at a mobile station/an apparatus an initial call request block probability ...and adjusting at the mobile station/the apparatus said initial call request block probability based on said elapsed time, said adjusted call request block probability identifying when the mobile station blocks a call request by foregoing origination of the call request.” Accordingly, Applicant respectfully requests the rejection of independent claims 1, 8, 14, 19, 24 and 25 be withdrawn.

The nonobviousness of independent claims 1, 8, 14 and 19 preclude rejection of claims 2-4, 6, 7, 9, 10, 12, 13, 15, 16, 18 and 20 which variously depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claims 1, 8, 14 and 19 and claims 2-4, 6, 7, 9, 10, 12, 13, 15, 16, 18 and 20 which variously depend therefrom.

Obviousness Rejection Based on Siwko, Redden, Bhatia and U.S. Patent No. 4,493,102

Claims 5, 11 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Siwko in view of Redden and Bhatia and further in view of U.S. Patent No. 4,493,102 to

Weishaupt ("Weishaupt").

The nonobviousness of independent claims 1, 8 and 14 preclude rejection of claims 5, 11 and 17 which respectively depend therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. See In re Fine, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), see also MPEP § 2143.03. Therefore, Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claims 1, 8 and 14 and claims 5, 11 and 17 which respectively depend therefrom.

Obviousness Rejection Based on Redden, Siwko and Bhatia

Claims 21 and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Redden in view of Siwko and further in view of Bhatia.

To establish a *prima facie* case of obviousness ***the prior art reference (or references when combined) must teach or suggest all the claim limitations***. In *re Royka*, 490 F.2d 981, 985 (CCPA 1974); see also MPEP § 2143.03. Additionally, there must be "a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1742, 167 L.Ed.2d 705, 75 USLW 4289, 82 U.S.P.Q.2d 1385 (2007). Finally, to establish a *prima facie* case of obviousness there must be a reasonable expectation of success. In *re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). Furthermore, the reason that would have prompted the combination and the reasonable expectation of success must be found in the prior art, common knowledge, or the nature of the problem itself, and not based on the Applicants' disclosure. *DyStar Textilfarben GmbH & Co. Deutschland KG v. C. H. Patrick Co.*, 464 F.3d 1356, 1367 (Fed. Cir. 2006); MPEP § 2144. Underlying the obvious determination is the fact that statutorily prohibited hindsight cannot be used. *KSR*, 127 S.Ct. at 1742; *DyStar*, 464 F.3d at 1367.

The 35 U.S.C. § 103(a) obviousness rejections of claims 21 and 22 are improper because the elements for a *prima facie* case of obviousness are not met. Specifically, the rejection fails to meet the criterion that the prior art reference must teach or suggest all the claims limitations. Regarding independent claim 21 and claim 22 depending therefrom, Applicant's independent claim 21 includes claim limitations not taught or suggested in the cited references.

Generally, Applicant's invention recites (1) "determining" and "adjusting" "an initial call

request block probability” all at the same entity, namely at the “apparatus” and (2) “blocking” as claimed by Applicant, wherein “the mobile station blocks a call request by foregoing origination of the call request.” Specifically, Applicant’s independent claim 21 recites, *inter alia*, “determining at the mobile station an elapsed time from an effective time of said initial call request block probability, wherein the block probability is determined by a network element and adjusting at the mobile station said initial call request block probability based on said elapsed time, said adjusted call request block probability identifying when the mobile station blocks a call request by foregoing origination of the call request.”

Applicant herein sustains the above-proffered arguments that Redden, Siwko and Bhatia, either individually or in any proper combination, do not teach or suggest all of Applicant’s claim elements and therefore cannot render Applicant’s claimed invention obvious under 35 U.S.C. § 103. Accordingly, the rejection of claim 21 must be withdrawn. Therefore, since Redden, Siwko and Bhatia, either individually or in any proper combination do not teach or suggest all of Applicant’s claim elements, these references cannot render obvious, under 35 U.S.C. §103, Applicant’s invention as presently claimed in Applicant’s independent claim 21 which each recites, *inter alia*, “determining at the mobile station an elapsed time from an effective time of said initial call request block probability, wherein the block probability is determined by a network element and adjusting at the mobile station said initial call request block probability based on said elapsed time, said adjusted call request block probability identifying when the mobile station blocks a call request by foregoing origination of the call request.” Accordingly, Applicant respectfully requests the rejection of independent claim 21 be withdrawn.

The nonobviousness of independent claim 21 precludes rejection of claim 22 which depends therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, Applicant requests that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to independent claim 21 and claim 22 which depends therefrom.

Allowable Subject Matter

Claim 23 is allowable.


Applicant acknowledges this indication with appreciation

CONCLUSION

Claims 1-25 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, the Examiner is respectfully invited to contact Applicant's undersigned representative.

Respectfully submitted,

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